



# STATE OF INDIANA

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September 4, 2014

Mr. Ronald H. Cosby  
218 Rosemarie Court  
Evansville, IN 47715

*Re: Formal Complaint 14-FC-166; Alleged Violation of the Open Door Law by the City of Evansville Salary Administration Committee*

Dear Mr. Cosby,

This advisory opinion is in response to your formal complaint alleging the City of Evansville Salary Administration Committee (“Committee”) violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Committee has responded via Counsel Dirck H. Stahl. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 5, 2014.

## **BACKGROUND**

Your complaint dated July 31, 2014, alleges the City of Evansville Salary Administration Committee violated the Open Door Law by holding a meeting behind closed doors.

You allege that on July 25, 2014, the Committee met in the Mayor’s Conference Room and members of the public or media were not allowed to observe. You contend the meeting should have been held in the open.

The Committee concedes the meeting took place as alleged, however, they argue it was a properly noticed executive session. The meeting was held pursuant to statute and proper notice was given and minutes were taken and available for inspection.

## **ANALYSIS**

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public

agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

The Open Door Law creates very narrow exceptions for when majorities of a governing body may meet to discuss specific subject matters behind closed doors. These exceptions are narrowly construed and are scrutinized closely to ensure compliance.

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. All of the subject matters intended to be discussed fall under the permissible discussion topics for a closed door executive session under the ODL.

Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to I.C. § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice.

It appears the meeting in question was a properly noticed executive session. Held for the purposes of evaluating the job performance of specific employees in order to make salary recommendations to the city council, the Committee’s actions are non-binding and are advisory in nature. The subject matter of the July 25, 2014 meeting was appropriate.

The Committee should be mindful; however, that the appearance of ratifying or “approving” salary schedules gives the impression the Committee is taking final action behind closed doors – which is prohibited under all circumstances. While the Committee only has the authority to make recommendations, their actions could be construed as inappropriate.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Evansville Salary Administration Committee has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt

Public Access Counselor

Cc: Mr. Dirck H. Stahl, Esq.